

June 7, 1996

EX PARTE

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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JUN 7 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Re: CC Docket No. 92-297

In the Matter of Rulemaking to Amend Part 1, 2, 21, and 25
of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz
Frequency Band to Reallocate the 29.5 - 30.0 GHz Frequency
Band to Establish Rules and Policies for Local Multipoint
Distribution Service and for Fixed Satellite Services

Dear Mr. Caton:

ComTech Associates ("CTA") is aware that the Commission has been asked, by letter^{1/} dated June 3, 1996, to conclude the 28 GHz rulemaking by adopting the *Third NPRM* band plan as proposed by the Commission in the *Third NPRM* adopted in July, 1995.

As small business focused on utilizing LMDS to provide competitive voice, data, and video services to commercial, residential, and government consumers, CTA does not support the call to conclude the rulemaking by simply adopting the *Third NPRM* band plan. Moreover, CTA has several concerns regarding this request.

First, it is unthinkable that the Commission, after months of concerted effort on the part of LMDS, MSS and FSS interests, would regress and adopt the band plan proposed in the *Third NPRM* when we are so close to a more productive resolution of open issues focused on the band plan referred to as "Option 4 Prime." As the

^{1/} Ex Parte Presentation; CC Docket No. 92-297: Letter to Chairman Hundt and Commissioners, dated June 3, 1996, supporting adoption of the *Third NPRM* band plan, with signatories CellularVision USA, Inc.; AT&T; Hughes Communications Galaxy, Inc.; Teledesic Corporation; Motorola, Inc.; The University of Texas - Pan American; Philips Electronics North America Corporation; Titan Information Systems; CellularVision of New York, L.P.; M/A COM, Inc.; RioVision of Texas, Inc.; International CellularVision Association; CellularVision Technology & Telecommunications, L.P.; GE American Communications, Inc.

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Commission is well aware, the key issues remaining in Option 4' center on the sharing rules between GSO/FSS Gateway terminals and LMDS. Over the past two months, interaction between GSO/FSS and LMDS interests has been both active and productive in moving toward a mutually acceptable solution to this sharing problem. To abandon these efforts now and adopt the *Third NPRM* band plan would transform these good-faith efforts into wasted efforts.

CTA appreciates the dedicated work of the Commission in attempting to reach a resolution acceptable to the myriad interests affected by the rulemaking. Furthermore, we believe that the various options offered by the Commission over the past several months reflect the deep commitment of both the Wireless and International Bureaus to finding a solution. To adopt the *Third NPRM* plan now would ignore this effort.

Adoption of the *Third NPRM* band plan would *fail to address the critical shortcoming for LMDS* -- the ability to operate subscriber-to-hub links in the small subband of spectrum shared on a co-primary basis with satellite uplinks. All parties involved in the 28 GHz rulemaking are clearly aware that this is an issue fundamental to the economic utility and viability of LMDS.

Without the ability to use the small subband of LMDS spectrum for subscriber transmitters, LMDS operators will be forced into a system solution which renders 120 to 150 MHz of spectrum unusable due to the need for guard bands. Reducing the guard bands below this level will drive the LMDS equipment cost to an unworkable level, and the prospect of "throwing away" this much spectrum will harm the potential for LMDS. Under the band plan proposed in the *Third NPRM*, it likely would still be possible to serve commercial telecom customers effectively. *However, the reduction in usable spectrum could require LMDS operators to shrink cell sizes below economically viable levels in order to deliver competitively bundled data, voice, and video services to the residential market. The band plan and spectrum sharing rules proposed in the Third Notice will compromise the use of LMDS to deliver competitive services to the residential market, something that is clearly at odds with the Commission's broader commitment to competition and choice.* Any reasonable business case will be rendered unworkable due to this wasted spectrum, both because fixed hub costs will be distributed over an amount of usable spectrum which is only 85 to 90 percent of that anticipated, and because the service area of a given hub will have to be reduced to allow service flexibility, thus increasing the number of hubs needed.

While CTA, among other LMDS proponents, have these concerns, it is not surprising that the band plan in the *Third NPRM* has been so broadly embraced by the satellite community. The GSO/FSS interests gain the full amount of spectrum originally envisioned and can step away from the compromise that the Commission worked so hard

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to produce. The NGSO/MSS proponents (Motorola in particular) escape the need to continue to justify the technically-insupportable position that they cannot share with LMDS subscriber transmitters.

We call on the Commission to clarify and fully articulate the resolution now under consideration. While we are cautiously optimistic about the qualifying language included in the June 3 letter to the Commission (advocating adoption of the band plan proposed in the *Third NPRM*, as supplemented by the interservice sharing rules that have been agreed to subsequently"), the rules to which this language refers are not clear. If it refers only to "agreements" for sharing between satellite services, we are not encouraged. The very existence of these agreements is clear evidence that such agreements can also be reached between LMDS and satellite parties if these parties are motivated. Adoption of the *Third NPRM* plan now will permanently remove the motivation on the part of the satellite parties to reach a compromise.

Furthermore, the American public would be poorly serviced if a band plan were adopted that harmed the potential viability of LMDS to provide competitive bundled telecommunications services in competition with cable TV and telephone monopolies. Limiting LMDS to a broadcast only technology, or reducing the usable spectrum for two-way services, will reduce substantially the potential revenues generated from the LMDS spectrum auction. This is especially ironic considering that satellite interests will be *GIVEN* 2,000 MHz of spectrum each while delaying the entry of a competitor for over four years.

Sincerely,



Jason Priest
Vice President,
ComTech Associates, Inc.

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